

OFFICE OF THE DIRECTOR SECONDAR EDUCATION, HARYANA, PANCHKULA.

Order No. 12/34-09 Admn. (2)

Dated, Panchkula the 10-6-2011

A copy of the instructions/ advice tendered/issued by the Financial Commissioner & Principal Secretary to Govt. Haryana, Finance Department vide their U.O.No. 6/2/1/2FD-II/87-A dated 31-5-2011, regarding counting of past service rendered in Government aided schools/ Colleges before these were taken over or before the appointment of an employee in the Government Establishment in the light of various judgments (for the purpose of pension/ gratuity) is forwarded to the following for information and necessary action:-

1. Director Elementary Education, Haryana, Panchkula.
2. Director SCERT Haryana, Gurgaon.
3. All the District Education Officer in the State.
4. All the District Elementary Education Officers in the State.
5. All the Principals DIETs in the State.
6. All the Headquarter Officers.
7. All the Superintendent (HQ).
8. PA/DSE.
9. PA/ Additional Director Administration-I.
10. PA/ Additional Director Administration-II.
11. PA/ Additional Director Administration-III.
12. Technology Officer (I.T. Cell) H.Q.

R. Anil Singh
Assistant Director Admn.

for Director Secondary Education, Haryana,
Panchkula



Subject:- Counting of past service rendered in Government aided Schools/Colleges before these were taken over or before the appointment of an employee in the Government Establishment in the light of various judgments(for the purpose of pension/gratuity).

Under the provisions of "The Haryana Affiliated Colleges (Pension and Contributed Provident Fund") Rules, 1999 and Haryana Aided Schools (Special pension and Contributory Provident Fund) Rules, 1999 pension scheme has been introduced and is applicable to employees in government aided Colleges/ Schools who were in service on 11.5.1998. The said cut off date was challenged by some employees of aided Colleges in CWP No. 1618 of 2000 K.C Thakur and others V/s State of Haryana. The said writ petition was dismissed by Hon'ble Punjab and Haryana High Court after considering the law laid down by the Hon'ble Supreme Court of India in many cases from time to time. LPA No. 469 of 2003 and LPA No. 138 of 2005, were filed in CWP No. 1618 of 2000 by the employees of Government aided Colleges. Again after considering the various judgments of Hon'ble Supreme Court of India the Hon'ble Division Bench was pleased to dismiss these LPAs vide orders dated 30.8.2010. In this way the cut off date for grant of pension/gratuity has already been upheld by Punjab and Haryana High Court.

2. So far as counting of past service rendered in Government aided colleges/schools before these were taken over or counting of service in aided establishment before appointment in Govt. Institutions is concerned there are some judgments of Hon'ble Punjab and Haryana High Court allowing the same. CWP No. 15932 of 1993 Balbir Singh Rathee V/s State of Haryana & CWP No. 13301 of 1999 Devender Kumar Sanhai V/s State of Haryana & others were filed by the petitioners who were initially appointed in Govt. aided Institutions and later on the Managements of these Institutions was taken over by the State of Haryana. The petitioner in these writ petitions were demanding the benefits of service rendered in the privately managed aided Schools before the take over by the State.



3. These writ petitions were decided vide order dated 31.7.2010 by the Hon'ble Punjab and Haryana High Court. The operative part of this Judgment is reproduced as under :-

"It is admitted case of the parties that the controversy involved in these petitions is covered by various judgments of this Court including the judgment dated 24-7-2009 passed in CWP No. 6586 of 2008, wherein following observations have been made:-

"The issue raised in the above said three writ petitions already stand adjudicated by this Court in a decision rendered in Civil Writ Petition No. 16817 of 2007 (Vijay Singh Vs. State of Haryana and others) decided CWP.No. 15932 of 1993 on July 22, 2009, It is also noticed that the State has taken a similar stand in response to notice issued in the said writ petitions. Relying upon the ratio laid down in the cases of Harnandan Singh Vs. State of Punjab and others, 2007 (2) RSJ 437 and Charan Singh Vs. State of Punjab and others, 2006 (6) SLR 624, decided by two different Division Benches of this Court and a case titled Union of India and others Vs. Jawahar Lal Sharma, 2003 (3) RSJ 672, the Court has directed the respondents to count the entire service rendered by the petitioners in a privately managed school and in the Government school for the purpose of pension and retrial benefits. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of Chander Sain Vs. State of Haryana and others, AIR 1994 Supreme Court 972. In all these cases, the Court has held that the service rendered in the aided school was required to be counted for the purpose of pension and retrial benefits.

In view of the above, both these petitions are allowed. Petitioners are entitled to the relief as granted in the aforesaid writ petitions.

Vide F.D.'s advice issued vide U.O. No. 60/58/2FDII/10/2856 dated 12.10.2010, the benefit of service rendered by Sh. Balbir Singh Rathee, retired Principal during the period from 1.11.1957 to 12.2.1981 in the Private Colleges was allowed by giving the relaxation in rules in compliance of the directions of Hon'ble Punjab and Haryana High Court vide order dated 21.1.2010 in CWP No. 15932 of 1993. After detailed examination, it is found that Sh. Balbir Singh Rathee retired from 23.4.1991 i.e. before the implementation of Pension Scheme. However, the said relaxation has been given due to the reasons that contempt petition was filed in this case and as per advice of Advocate General, Haryana and L.R. Haryana, it was not a fit case for filing further appeal. Whereas the cut off date of pension Scheme i.e. 11.5.1998 has already been upheld by the Hon'ble Punjab and



Haryana High Court in K.C. Thakur's case as mentioned herein before . It was duty of the department concerned to bring all these facts in the notice of Advocate General , Haryana as well as in the notice of Hon'ble High Court . It is also pointed that CWP No. 15932 of 1993 has decided on dated 21.1.2010 alongwith CWP No. 13301 of 1994 Sh. D.K. Sanehi V/S State of Haryana. Whereas in the case of Sh. D.K. Sanehi the benefit has not been allowed so far. Sh. D.K. Sanehi retired from service on 31.5.1993 In view of this position LPA is required to be filed in both these cases.

4. After considering all the facts and circumstances of the case, the Finance Department has already allowed the benefit of past services rendered in government aided establishment before these were taken over vide FD's advice issued by U.O. No. 3/76/06/2FD-II/3240 dated 6.6.2007 and advice No. 78/06/2010/3FD-II/2031 dated 15.7.2010 and advice dated 19.1.2011.

5. The whole issue has been re-examined in the light of above mentioned facts and it has now been decided to allow the benefit of past service rendered by an employee in government aided establishment before these were taken over or service rendered in aided establishment before appointment in Govt. Institutions. This will be applicable to those who are covered under the Haryana Aided Schools (Pension and contributory Provident fund) Rules, 1999 and Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 and entitled to the benefits of pension. This benefit will be subject to the following conditions:-

1. That this offer will be optional and applicable only to those employees who agree to refund the Management Share (before the date of taking over of the Colleges/Schools by the State Government alongwith 10% annual compound interest). This amount can be deducted from their gratuity and they will give an undertaking to this effect that if the amount of Contributory Provident Fund is more than gratuity payable to them, then the pensioners will deposit the excess amount in Govt. Treasury.
2. That if a retired Govt. employee opts for this benefit he shall deposit the share of contribution made by the Management alongwith 10% annual compounded interest (upto the date of depositing), in lump sum in Govt. Treasury.



3. That these benefits will be made effective in respect of the employees of the taken over Colleges/Schools from the date of Pension Scheme made applicable in Private Aided Colleges/Schools i.e. with effect from 11.5.98.

6. This advice is in supersession of FD's earlier advice issued vide U.O. No. 3/76/06-2FD-II/3240 dated 6.6.2007 and in continuance of U.O. No. 78/06/2010-3FD-II/2031 dated 15.7.2010 and U.O. No. 78/06/2010-3FD-II/3120 dated 19.1.2011.

7. All the cases/representations of the employees may be examined in the light of this advice and the provisions in above mentioned two service rules applicable in the Govt. aided Colleges/Schools and the observation of the Hon'ble High Court in the above mentioned cases. In case, the claim of any employee is not covered in this advice or provision of Service Rules in that eventuality, the claim of the employee may be rejected by passing a detailed Speaking Order. If any employee approaches the Hon'ble court for claiming any benefit beyond this advice or provisions of Service Rules his case may be contested seriously up to the highest level. If it is found that due to any negligence of any officer/official, the case has been decided against the state Government, in that case, the responsibility under the provision of rules 7 of the Punishment and Appeal Rules 1987 will be fixed against him and loss to the State Exchequer will be recovered from his pocket.

Poonam Singh
Superintendent FD-II

for Financial Commissioner & Principal Secretary
to Government Haryana, Finance Department.

To

1. The Financial Commissioner & Principal Secretary to Govt. Haryana, Higher Education Department.
2. The Financial Commissioner & Principal Secretary to Govt. Haryana, School Education Department.

U.O. No. 60/20/10/2FD-II/870-A

Dated: 31 May, 2011